

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH
W.P.Nos.20193 of 2005 and 16394 of 2004
and WPMP.No.22006 of 2005

IN W.P.No.20193 of 2005

The Manager,
Washermanpet Co-operative Stores,
Mini Super Market,
19, G.A.Road,
Chennai 21.

... Petitioner

Vs.

1. Mr.C.Chandrasekaran
2. The Appellate Authority under Tamil Nadu Shops
and Establishment Act, 1947,
Deputy Commissioner of Labour (Appeal),
Chennai - 6.

... Respondents

Prayer: Writ petition filed under Article 226 of the
Constitution of India to issue a Writ of Certiorari, calling for
the records on the file of the second respondent in TSEA
No.9/93, dated 03.12.1996 and quash the same.

For Petitioner : Ms.G.Sankaran
For Respondents : Ms.Swadhi Subramanian, for R1

IN W.P.No.16394 of 2004

C.Chandrasekaran

... Petitioner

Vs.

1. The Joint Registrar of Co-operative Societies,
Chennai Region,
Chennai.
2. The Special Officer,
Washermenpet Co-operative Stores Ltd.,
91/2, P.A.N.R. Road,
Chennai 600 021.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to reinstate the petitioner in service with full backwages, and other consequential service benefits based on the order of acquittal in the Criminal Case in C.C.6687 of 1990.

For Petitioner : Ms.Swadhi Subramaniam
For Respondents : Ms.T.Girija, G.A., for R1
Mr.L.P.Shanmugasundaram,
Spl.G.P., for R2

C O M M O N O R D E R

The first respondent in W.P.No.20193 of 2005 (hereinafter referred to as employee), who was employed under the petitioner's Co-operative Stores in W.P.No.20193 of 2015 (hereinafter referred to as employer), was levelled with charges of misappropriation, pursuant to which, the surcharge proceedings came to be initiated and order was passed on 30.11.1989. Subsequently, the employee was dismissed from the service on 04.02.1991. As against the order of dismissal, the employee had filed an appeal before the employer under Section 41 (2) of the Tamil Nadu Shops and Establishment Act 1947, to declare the termination as invalid.

2. The Appellate Authority had found that the order of dismissal dated 04.02.1991 is ultra vires and without jurisdiction and set aside the order of dismissal. As against the same, the employer had filed the Writ Petition in W.P.No.20193 of 2005. The employee has also filed a Writ Petition in W.P.No.16394 of 2004, seeking for a direction to reinstate him in services with backwages and other consequential service benefits, wherein one of the grounds raised is his involvement in the Criminal Case in C.C.No.6887 of 1990, which ended in acquittal.

3. It is now brought to the notice of this Court that the employee had reached the age of superannuation.

4. I have perused the order of dismissal dated 04.02.1991, which is a one line order which reads that since the petitioner had misappropriated a sum of Rs.99,821/- from the Co-operative Stores, he was dismissed from service, under Bye-laws No.6(iii). Rule 149 (18) (c) of the Tamil Nadu Co-operative Societies Rules prescribes that every order imposing penalty should be a speaking order, containing details of the charges, explanation offered and the other grounds on which the penalty is imposed. The punishment imposed on the petitioner herein is a major

punishment and totally in contravention of the procedures prescribed under the Tamil Co-operative Societies Rules. The employer had chosen to invoke the Bye-laws when the Societies Rules were very much in vogue. Apparently, the Rules were not adhered to overcome the objections raised by the employee. It is also seen that serious misconducts have been levelled against the employee, alleging falsification of accounts, misappropriation of money, etc.

5. During the course of the Domestic enquiry or before the Appellate Authority, none of the records, which were relied upon by the employer, had been produced and such copies were also not served on the employee. In view of the same, the employee had been denied an opportunity to defend his case effectively. As such, this irregularity is in gross violation of the principles of natural justice enshrined in the Constitution of India.

6. The Appellate Authority had also gone into these aspects and rightly concluded that the Domestic Enquiry was not fairly conducted and it was violative of the principles of natural justice. The Authority had further held that the employer's witness was an interested witness, since the reinstatement of the employee would affect his service and he may have to undergo reversion and thereby disbelieved his statement. By observing so, the Appellate Authority had found that the findings of the Enquiry Officer are perverse. Quoting all these reasons, the Appellate Authority had set aside the order of dismissal. I do not find any reason to interfere with the same.

7. In view of the above observations, the dismissal order dated 04.02.1991 is set aside and consequently, the employer, the Special Officer, Washermenpet Co-operative Stores Ltd., Chennai 600 021, is directed to settle the backwages along with consequential benefits to the petitioner, from the date of dismissal till his date of superannuation, as expeditiously as possible, in any event, within a period of three months from the date of receipt of a copy of this order. The Writ Petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Manager,
Washermanpet Co-operative Stores,
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19, G.A.Road,
Chennai 21.
2. The Appellate Authority under Tamil Nadu Shops
and Establishment Act, 1947,
Deputy Commissioner of Labour (Appeal),
Chennai - 6.
3. The Joint Registrar of Co-operative Societies,
Chennai Region,
Chennai.
4. The Special Officer,
Washermenpet Co-operative Stores Ltd.,
91/2, P.A.N.R. Road,
Chennai 600 021.

+1cc to Mr.R.Prem Narayan, Advocate sr.29034
+1cc to Mr.L.P.Shanmugasundaram, Advocate sr.29415
+1cc to Government Pleader sr.29823

W.P.Nos.20193 of 2005
and 16394 of 2004

nr 09/05/2019

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